525 WEST JEFFERSON ST. ● SPRINGFIELD, ILLINOIS 62761 ●(217) 782-3516 FAX: (217) 785-4111

DOCKET NO:	BOARD MEETING:	PROJECT NO:	PROJECT COST:
H-10	December 10, 2012	12-085	Original: \$3,145,940
	TY NAME:	CITY:	
TYPE OF PROJECT	ale Dialysis :: Substantive	Chicago	HSA: VI

<u>PROJECT DESCRIPTION:</u> DaVita, Inc., Total Renal Care, Inc., and Cowell Dialysis, LLC (the applicants) are proposing to establish a 16-station ESRD facility in 6,781 GSF of leased space in Chicago. The cost of the project is \$3,145,940. **The anticipated project completion date is March 31, 2014.**

EXECUTIVE SUMMARY

PROJECT DESCRIPTION:

- DaVita Inc., Total Renal Care, Inc., and Cowell Dialysis, LLC (the applicants) are proposing to establish a 16-station ESRD facility in 6,781 GSF of leased space. Cowell Dialysis, LLC will operate Lawndale Dialysis, which shall be used as a trade name. DaVita Inc. is the entity that has final control over the proposed operator. DaVita will own 51% of Cowell Dialysis, LLC, Zoa Associates will own 27% and Mt. Sinai will own 22%. The cost of the project is \$3,145,940. The new facility will be located at 3934 West 24th Street, Chicago, and the additional stations will be utilized to serve the growing ESRD population in HSA-VI.
- The anticipated project completion date is March 31, 2014.

WHY THE PROJECT IS BEFORE THE STATE BOARD:

• To establish a health care facility as defined by Illinois Health Facilities Planning Act.

PURPOSE OF THE PROJECT:

 The proposed project seeks to maintain access to life-sustaining ESRD services in Chicago, HSA-VI, and the Lawndale community. The applicants note the chronically ill ESRD patients from the Lawndale community are more often low income, disabled, and members of minority groups.

NEED FOR THE PROJECT:

- To establish a dialysis service
 - 1. there must be a calculated need in the planning area;
 - 2. the proposed service must provide service to planning area residents;
 - 3. there must be a demand for the service in the planning area;
 - 4. the proposed service must improve access;
 - 5. the proposed service will not cause an unnecessary duplication of service or maldistribution of service; and,
 - 6. will not reduce the utilization of other area providers.
- HSA-VI currently has a calculated need for 82 ESRD stations by CY 2013.
- Projected referrals from Dr. Ogbonnaya Anezoikoro, M.D. identified 74 pre-ESRD patients who will be referred to the new facility in its first two years of operation, and 25 existing ESRD patients who will transfer from over-utilized facilities in the area, to the proposed facility, when completed.
- There are 45 existing or approved facilities within 30 minutes with an average utilization rate of 75%, 25 of these facilities are below the State Board's Occupancy Target of 80%.

		TABL	E ONE			
	Facilities with	nin 30 minut	es of Lawn		(1)	
Facility	City	Adjusted Minutes	Stations	September 2012 Utilization	State Board Target Occupancy	Met 80% Standard
Mt. Sinai Hospital	Chicago	7	16	88.54%	80%	Yes
DaVita Little Village	Chicago	8	16	100.00%	80%	Yes
FMC West	Chicago	10	31	55.91%	80%	No
FMC Congress Parkway	Chicago	10	30	67.28%	80%	No
U of I Hospital Dialysis	Chicago	11	26	0.00%	80%	No
Cook County Hospital	Chicago	11	9	50.00%	80%	No
Rush University	Chicago	12	5	0.00%	80%	No
Garfield Kidney Center	Chicago	13	16	80.30%	80%	Yes
FMC Chicago Dialysis	Chicago	15	21	62.70%	80%	No
FMC Austin	Chicago	15	16	64.58%	80%	No
Circle Medical Mgmt.	Chicago	15	27	70.37%	80%	No
DSI Loop Renal Ctr.	Chicago	16	28	55.95%	80%	No
FMC East Delaware	Chicago	16	24	61.81%	80%	No
FMC Berwyn	Berwyn	16	26	103.85%	80%	Yes
Oak Park Kidney Ctr.	Oak Park	16	18	147.22%	80%	Yes
FMC West Suburban	Oak Park	17	46	87.32%	80%	Yes
FMC West Metro	Chicago	17	30	91.51%	80%	Yes
FMC Bridgeport	Chicago	17	27	93.83%	80%	Yes
West Lawn Dialysis	Chicago	18	12	43.06%	80%	No
FMC Oak Park Dialysis	Oak Park	18	12	62.96%	80%	No
FMC Midway	Chicago	18	12	72.22%	80%	No
FMC Prairie	Chicago	18	24	75.00%	80%	No
Woodlawn Dialysis	Chicago	20	32	60.42%	80%	No
FMC North Avenue	Melrose Park	20	22	86.11%	80%	Yes
DaVita Emerald Dialysis	Chicago	20	24	88.19%	80%	Yes
Loyola Dialysis Ctr.	Maywood	21	30	0.00%	80%	No
FMC River Forest	River Forest	21	20	17.17%	80%	No
FMC West Willow	Chicago	21	12	20.83%	80%	No
FMC Dialysis Burbank	Burbank	21	22	80.13%	80%	Yes
FMC Garfield	Chicago	21	22	80.30%	80%	Yes
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FMC Melrose Park	Melrose Park	23	18	59.26%	80%	No
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FMC Northcenter	Chicago	28	16	81.25%	80%	Yes
RCG Villa Park	Elmhurst	30	24	88.89%	80%	Yes

^{1.} Mileage calculated using MapQuest. Time calculated per 77 IAC 1100.510 (d)

BACKGROUND/COMPLIANCE ISSUES

- Neither applicant has outstanding compliance issues with the State Board.
- DaVita's Commitment Statement DaVita is committed to operating Lawndale Dialysis in a manner that will maintain the financial viability of the dialysis facility while at the same time operating for the benefit of the community and in a manner that furthers the charitable purposes of its joint venture partner, Mount Sinai Hospital, by promoting health care access for a broad cross-section of the community: To this end, Lawndale Dialysis will accept all patients who are Clinically appropriate for in-center hemodialysis services, regardless of their ability to pay; provided financially needy patients who do not qualify for Medicare, Medicaid, commercial insurance, or American Kidney Fund or National Kidney Foundation grants comply with DaVita's financial policies which include but are not limited to the Patient Financial Responsibilities and Patient Financial Evaluation policies. This commitment is made in the context of the current reimbursement, regulatory and business environment in which DaVita operates and is subject to the assumption that there will be no material changes in. that environment. DaVita will communicate this policy in writing to each nephrologist who applies for and obtains medical staff privileges at Lawndale Dialysis.

PUBLIC HEARING/COMMENT

A public hearing was held on October 23, 2012. 19 individuals were in attendance, 15 spoke in support of the project and 2 individuals opposed the project.

^{2. *}Recently approved facility, no data available

- Penny Davis Vice President DaVita stated in support "we believe that providing access to care within distinct communities such as Lawndale will increase compliance with care and ensure a healthier population. Patients within communities such as Lawndale and Little Village have little access to discretionary funds for transportation for gas or bus fares. They face challenges many of us cannot even imagine bus fare or food, child care while they receive treatment three times per week or go without. Without convenient and easily accessible care, they may make choices that in the end, increase the health care costs of the entire system driving patients to the emergency room because they missed treatment DaVita has been serving the Lawndale community at its Little Village facility for the last seven years. Our partner for the expansion of this service in the community, Mt. Sinai Hospital, has been a provider of this service since the inception of dialysis as a life saving treatment for kidney failure over 45 years ago."
- Ricardo Munoz, the Alderman representing Chicago's 22nd Ward stated in support. "My ward includes Lawndale Dialysis' proposed site and the surrounding community. I am here again to support DaVita's proposal to provide dialysis services to my community. Lawndale Dialysis will improve access to essential dialysis treatment for Chicago residents who live in my Ward. I have called Little Village home for most of my life. I grew up here. In fact, my office is just one block from the house I grew up in and two blocks from the grammar school I graduated from in 1979. My ward has one of the higher concentrations of Hispanics in the City of Chicago, and as a Mexican-American myself, I represent my community's interests with a passion. That is why I am here today. My community faces many impediments to access to health care including cultural disparities and a lack of understanding of the health care system, financial issues and racism. Health education and wellness is hampered by lack of education and insurance and poor nutrition. Unfortunately, because of public health issues, we need these dialysis services in our community. The project will help meet the well documented medical needs of an underserved community. As you may know, Latinos are particularly vulnerable to increased rates of obesity, hypertension, and diabetes. DaVita, as a willing provider of such services, should not only be permitted, but encouraged to come to our community. This is particularly true when your inventory shows a need for 78 stations in the City of Chicago. DaVita contributes directly to improving patients' lives, both locally and nationally through service innovations and community investment. DaVita has demonstrated its commitment to the City of Chicago in many ways. DaVita has accounted for approximately millions in charitable donations nationally and has committed \$1.5 million for their employees, or "teammates," as they call them, to put toward charitable work in communities much like Lawndale.

DaVita's facilities hire locally, and even provide scholarships for staff to enhance their skills and their ability to be promoted in the company. I have been an active participant in improving conditions for the working class and one of my proudest achievements is being one of the original City Council sponsors of the historic Chicago Living Wage legislation that requires city contractors pay employees a salary that is high enough to support a family. I was also instrumental in the City's passage of a wage increase."

• **Keith Nelson, Director of Laboratory Operations at Saint Anthony Hospital spoke in opposition**. "Earlier this year Mt. Sinai opposed the DaVita CON application citing how this for-profit entity would negatively impact the community, primarily taking the favorably insured patients within the community. Nothing has really changed because of the recent DaVita/Mt. Sinai relationship as DaVita still maintains majority control. The DaVita/Mt. Sinai project will be no different than the other DaVita sites throughout the city of Chicago. There should be better options available that would provide the continuity of care that is so critical for the ESRD and

pre-ESRD patients. Saint Anthony Hospital, a faith-based, nonprofit community teaching hospital has served the residents of this community since 1897. We continuously provide community outreach to better this community. We believe in providing a complete continuum of care to our patients. The prevalence of high-risk medical conditions in the dialysis patient requires a need to address all the needs of that dialysis patient. We feel another freestanding forprofit dialysis center does not meet those needs. For profit applications appear continuously. We urge you to deny this application. What the community needs is a community hospital dialysis program that can meet the complete continuum of inpatient and outpatient dialysis needs and is not tied to the for-profit decision making of a commercial dialysis provider."

Jim Sifuentes, I'm the Vice President for Community Development at Saint Anthony **Hospital**, "I am here to oppose the CON for the Lawndale Dialysis Center for several reasons. I've worked in the community here, Pilsen, for over 25 years, and I know the community very well, and when people come in as a for-profit, a for-profit is in the business to make money. Any company that's a for-profit they're here to make money. It's interesting that Sinai opposed this and now they're for it. An example of that -- and there's nothing wrong with a for-profit, they do their business, but their interest is to make money. Last year in 2011 DaVita's net revenue was a little over - not a little over, \$219 million. Their charity care was \$830,000, less than 1 percent. Do the comparison. Saint Anthony Hospital, net revenue \$83 million, our community benefit \$7 million. When people come in and they say we care for the community, we care for the needs, we understand, you can tell a story for \$830,000, that's chump change because there's so many undocumented here, and you're going to tell me as a for-profit you're going to take money to care for those people all the way through the continuum of care? I question that, and I question it strongly. I don't doubt all the needs that the doctors here who I admire have faced. I know them well as a diabetic. But I can't sit here and pretend like a for-profit is going to take care of those and not turn anybody away. The numbers don't lie \$830,000, 219 million you made. I oppose this."

FINANCIAL AND ECONOMIC FEASIBILITY:

- The project will be funded through internal sources (Cash (\$487,715) and Fair Market Value of the Leases (\$1,374,469)) and a loan in the amount of \$1,283,756. The loan is being made to DaVita Inc., Mount Sinai Hospital, and Zoa Associates, Inc. (wholly owned by Dr. Ogbonnaya Anezoikoro, M.D). The loan is a pro rata guarantee as per the ownership agreement of Cowell Dialysis, LLC.
- The loan is for leasehold improvements and working capital requirements for a period of 24 months interest only revolver that converts to a term loan at the 25th month for 7 years. Interest rate is the 30 day LIBOR rate plus 2.25% with a 4.5% floor.
- While the applicants do not meet all the financial ratios for all years reported a review of
 the audited financial statements indicates sufficient cash is available to fund the cash
 portion of the project and it appears that there will be sufficient cash to repay the loan
 guarantees.

CONCLUSIONS:

- HSA-VI currently has a calculated need for 82 ESRD stations.
- A referral letter from Dr. Ogbonnaya Anezoikoro, M.D. identifies 74 pre-ESRD patients who will be referred to the new facility in its first two years of operation, and 25 ESRD patients expected to transfer in from over populated ESRD facilities in the service area.

• There are 45 facilities within 30 minutes with an average occupancy rate of 75%, which 25 facilities are below the State Board's Occupancy Target.

State Board Standards Not Met						
Criteria	Reasons for Non-Compliance					
1110.1430(b) - Planning Area Need	There is a need for 82 stations in the planning					
	area however there are 25 existing facilities not					
	at target occupancy within 30 minutes of the					
	proposed facility.					
1110.1430(c)- Unnecessary Duplication of	There are 25 facilities within 30 minutes that					
Services/Maldistribution	are not at target occupancy and an					
	unnecessary duplication of service may result					
	in the establishment of this facility.					

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STATE BOARD STAFF REPORT Lawndale Dialysis, Chicago PROJECT #12-085

Applicants	DaVita, Inc.
	Total Renal Care, Inc.
	Cowell Dialysis, LLC
Facility Name	Lawndale Dialysis
Location	Chicago
Application Received	October 2, 2012
Application Deemed Complete	October 2, 2012
Review Period Ended	December 2, 2012
Review Period Extended by the State Board Staff	No
Public Hearing Requested	No
Applicants' Deferred Project	No
Can Applicants Request Another Deferral?	Yes

I. The Proposed Project

The State Board is being asked to consider the establishment of a 16-station ESRD facility in the Lawndale neighborhood in Chicago. The proposed facility will be located in 6,781 GSF of leased space, and the cost of the project is \$3,145,940. **The anticipated project completion date is December 31, 2015.**

II. Summary of Findings

- A. The State Board Staff finds the proposed project does **not** appear to be in conformance with the provisions of Part 1110.
- B. The State Board Staff finds the proposed project appears to be in conformance with the provisions of Part 1120.

III. General Information

The applicants, Total Renal Care, Inc., DaVita, Inc., and Cowell Dialysis, LLC., propose to establish a 16-station ESRD facility in 6,781 GSF of space, at 3934 West 24th Street, Chicago, in the Lawndale community. DaVita Inc has final control of all the entities, and SDO Development, LLC owns the site. Cowell Dialyiss, LLC is the operating entity/licensee. The proposed facility will be located in HSA VI. HSA VI is comprised of the City of Chicago. The November 2012 update to the IDPH Inventory of Health Care Facilities ("Inventory") shows a computed need

for 82 ESRD stations in HSA VI.

There is no land acquisition cost for this project, as the proposed facility will be newly constructed/leased space. This is a substantive project subject to both a Part 1110 and Part 1120 review. Project obligation will occur after permit issuance. The anticipated project completion date is March 31, 2014.

A public hearing was held on this project on October 23, 2012. Letters of support were received for this project.

IV. The Proposed Project - Details

The applicants propose to establish a 16-station ESRD facility located at 3934 West 24th Street, Chicago. The proposed facility will serve the Lawndale community, and alleviate over-utilization of Little Village Dialysis; an ESRD facility located approximately 2.5 miles away which is currently operating at 95% capacity. The applicants note the proposed facility will consist of 6,781 GSF of leased space, and the total estimated project cost is \$3,145,940.

V. <u>Project Costs and Sources of Funds</u>

The total estimated project cost is \$3,145,940. The proposed project is being funded with cash and securities totaling \$487,715, a bank loan of \$1,283,756 and leases with a Fair Market Value of \$1,374,469. Table Two outlines the project's costs and uses of funds. The State Board Staff notes all costs are classified as being clinical.

TABLE TWO Project Uses and Sources of Funds						
Uses of Funds	Clinical					
Modernization Contracts	\$940,600					
Contingencies	\$140,000					
A & E Fees	\$52,800					
Consulting & Other Fees	\$75,000					
Moveable Equipment	\$525,708					
Net Interest Expense During Construction	\$37,363					
Fair Market Value of Leased Space/Equipment	\$1,374,469					
Total Uses of Funds	\$3,145,940					
Sources of Funds	Clinical					
Cash and Securities	\$487,715					

TABLE TWO					
Project Uses and Sources of Funds					
Uses of Funds	Clinical				
Loan	\$1,283,756				
Leases (fair market value)	\$1,374,469				
Total Sources of Funds	\$3,145,940				

VI. <u>Cost/Space Requirements</u>

Table Three displays the project's cost/space requirements for the project. The clinical portion comprises approximately 100% of the cost and GSF.

TABLE THREE								
Lawndale Dialysis-Cost/Space Allocation								
Clinical Department	Cost	Existing GSF	Proposed GSF	New	Modernized	Vacated	As Is	
ESRD	\$3,145,940	0	6,781	0	6,781	0	0	
Total	\$3,145,940	0	6,781	0	6,781	0	0	

VII. Section 1110.230 - Project Purpose, Background and Alternatives

A. Safety Net Impact Statement/Charity Care

Davita's Safety Net Statement

DaVita accepts and dialyzes patients with renal failure needing a regular course of dialysis without regard to race, color, national origin, gender, sexual orientation, age, religion, disability or ability to pay. Complete charity care is very unusual as most dialysis patients are covered by some type of payment system.

US Citizen patients are covered by commercial insurance, Medicare or Medicaid. If not covered through one of these avenues there are options through application and acceptance to receive payment through the American Kidney Foundation or National Kidney Foundation. For non-qualified aliens in IL the Emergency Medicaid program covers them.

If we have exhausted all other avenues for payment methods, we have a patient financial evaluation policy in place. From this evaluation we determine the financial ability and obligation to pay.

This information was taken from Davita Inc. 10-K for fiscal year ended December 31, 2010

"Medicare pays 80% of the amount set by the Medicare system for each covered treatment. The patient is responsible for the remaining 20%. In most cases, a secondary payor, such as Medicare supplemental insurance, a state Medicaid program or a commercial health plan, covers all or part of these balances. Some patients, who do not qualify for Medicaid but otherwise cannot afford secondary insurance, can apply for premium payment assistance from charitable organizations through a program offered by the American Kidney Fund. We and other dialysis providers support the American Kidney Fund and similar programs through voluntary contributions. If a patient does not have secondary insurance coverage, we are generally unsuccessful in our efforts to collect from the patient the 20% portion of the ESRD composite rate that Medicare does not pay. However, we are able to recover some portion of this unpaid patient balance from Medicare through an established cost reporting process by identifying these Medicare bad debts on each center's Medicare cost report.

TABLE FOUR Davita Illinois Facilities Self Pay and Medicaid Information							
CHARITY CARE	2009	2010	2011				
Net Revenue	\$ 149,370,292 \$ 161,884,078 \$219,396,657						
Charity (# of Self-Pay Patients)	66	96	96				
Charity (Self-Pay Cost)	\$597,263	\$957,867	\$830,580				
% of Net Revenue	0.40%	0.59%	.37%				
MEDICAID							
Medicaid (Patients)	445	563	729				
Medicaid (Revenue)	\$8,820,052	\$10,447,021	\$14,585,645				
% of Net Revenue	5.90%	6.45%	6.64%				

B. Criterion 1110.230(b) - Purpose of the Project

The Criterion states:

The applicant shall document that the project will provide health services that improve the health care or well-being of the market area population to be served. The applicant shall define the planning area or market area, or other, per the applicant's definition.

The applicant shall address the purpose of the project, i.e., identify the issues or problems that the project is proposing to address or solve. Information to be provided shall include, but is not limited to, identification of existing problems or issues that need to be addressed, as applicable and appropriate for the project. Examples of such information include:

- A) The area's demographics or characteristics (e.g., rapid area growth rate, increased aging population, higher or lower fertility rates) that may affect the need for services in the future;
- B) The population's morbidity or mortality rates;
- C) The incidence of various diseases in the area;
- D) The population's financial ability to access health care (e.g., financial hardship, increased number of charity care patients, changes in the area population's insurance or managed care status);
- E) The physical accessibility to necessary health care (e.g., new highways, other changes in roadways, changes in bus/train routes or changes in housing developments).
- 2) The applicant shall cite the source of the information (e.g., local health department Illinois Project for Local Assessment of Need (IPLAN) documents, Public Health Futures, local mental health plans, or other health assessment studies from governmental or academic and/or other independent sources).
- The applicant shall detail how the project will address or improve the previously referenced issues, as well as the population's health status and well-being. Further, the applicant shall provide goals with quantified and measurable objectives with specific time frames that relate to achieving the stated goals.
- 4) For projects involving modernization, the applicant shall describe the conditions being upgraded. For facility projects, the applicant shall include statements of age and condition and any regulatory citations. For equipment being replaced, the applicant shall also include repair and maintenance records.

The applicants propose to establish a 16-station ESRD facility in 6,781 gross square feet of modernized, leased space, at 3934 West 24th Street, Chicago. The proposed facility will be located in the Lawndale neighborhood, and the applicants state that the purpose of the proposed project is continue to meet the growing need for ESRD services in this particular neighborhood in Chicago. The applicants note the chronically ill ESRD patients in the Lawndale community are predominately disabled, elderly, low-income, and members of minority groups. Board Staff identified 45 ESRD facilities in the service area, and reports an average occupancy percentage of 75%, based on November 2012 ESRD Utilization data (See Table Four).

Table Four identifies facilities within a 30-minute time frame and their utilization as supplied by the applicants. As seen in this table, 25 (56%) of

the 45 facilities within a 30-minute travel radius are below the State Standard (80%), for utilization. **The State Board Staff notes** Rush University, University of Illinois, and Loyola Dialysis did not reply to the State Board Staff's request for dialysis information.

		TABL	E FIVE						
Facilities within 30 minutes of Lawndale Dialysis (1)									
Facility	City	Adjusted Minutes	Stations	September 2012 Utilization	State Board Target Occupancy	Met 80% Standard			
Mt. Sinai Hospital	Chicago	7	16	88.54%	80%	Yes			
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^{1.} Mileage calculated using MapQuest. Time calculated per 77 IAC 1100.510 (d)

The applicants cited quantifiable goals as being the ability to improve access while monitoring patient demand, and that the facility will achieve quality outcomes as demonstrated by achieving 85% of patients having a URR greater than or equal to 65%, and 85% of patients having a Kt/V greater than or equal to 1.2.

IX. Section 1110.1430 - In-Center Hemodialysis Projects - Review Criteria

The criterion for establishing an ESRD facility reads as follows:

1) 77 Ill. Adm. Code 1100 (formula calculation)

^{2. *}Recently approved facility, no data available

- A) The number of stations to be established for in-center hemodialysis is in conformance with the projected station deficit specified in 77 Ill. Adm. Code 1100, as reflected in the latest updates to the Inventory.
- B) The number of stations proposed shall not exceed the number of the projected deficit, to meet the health care needs of the population served, in compliance with the utilization standard specified in 77 Ill. Adm. Code 1100.

2) Service to Planning Area Residents

- A) Applicants proposing to establish or add stations shall document that the primary purpose of the project will be to provide necessary health care to the residents of the area in which the proposed project will be physically located (i.e., the planning or geographical service area, as applicable), for each category of service included in the project.
- B) Applicants proposing to add stations to an existing incenter hemodialysis service shall provide patient origin information for all admissions for the last 12-month period, verifying that at least 50% of admissions were residents of the area. For all other projects, applicants shall document that at least 50% of the projected patient volume will be from residents of the area.
- C) Applicants proposing to expand an existing in-center hemodialysis service shall submit patient origin information by zip code, based upon the patient's legal residence (other than a health care facility).
- 3) Service Demand Establishment of In-Center Hemodialysis Service

The number of stations proposed to establish a new incenter hemodialysis service is necessary to accommodate the service demand experienced annually by the existing applicant facility over the latest two-year period, as evidenced by historical and projected referrals, or, if the applicant proposes to establish a new facility, the applicant shall submit projected referrals The applicant

shall document subsection (b) (3) (A) and either subsection (b) (3) (B) or (C).

A) Historical Referrals

- i) If the applicant is an existing facility, the applicant shall document the number of referrals to other facilities, for each proposed category of service, for each of the latest two years.
- ii) Documentation of the referrals shall include: patient origin by zip code; name and specialty of referring physician; name and location of the recipient facility.
- B) Projected Referrals

 The applicant shall provide physician referral letters that attest to:
 - i) The physician's total number of patients (by facility and zip code of residence) who have received care at existing facilities located in the area, as reported to The Renal Network at the end of the year for the most recent three years and the end of the most recent quarter;
 - ii) The number of new patients (by facility and zip code of residence) located in the area, as reported to The Renal Network, that the physician referred for in-center hemodialysis for the most recent year;
 - iii) An estimated number of patients (transfers from existing facilities and pre-ESRD, as well as respective zip codes of residence) that the physician will refer annually to the applicant's facility within a 24-month period after project completion, based upon the physician's practice experience. The anticipated number of referrals cannot exceed the physician's documented historical caseload;
 - iv) An estimated number of existing patients who are not expected to continue requiring in-center hemodialysis services due to a change in health

status (e.g., the patients received kidney transplants or expired);

- v) The physician's notarized signature, the typed or printed name of the physician, the physician's office address and the physician's specialty;
- VI) Verification by the physician that the patient referrals have not been used to support another pending or approved CON application for the subject services; and
- VI i) Each referral letter shall contain a statement attesting that the information submitted is true and correct, to the best of the physician's belief.

5) Service Accessibility

The number of stations being established or added for the subject category of service is necessary to improve access for planning area residents. The applicant shall document the following:

A) Service Restrictions

The applicant shall document that at least one of the following factors exists in the planning area:

- i) The absence of the proposed service within the planning area;
- ii) Access limitations due to payor status of patients, including, but not limited to, individuals with health care coverage through Medicare, Medicaid, managed care or charity care;
- iii) Restrictive admission policies of existing providers;
- iv) The area population and existing care system exhibit indicators of medical care problems, such as an average family income level below the State average poverty level, high infant mortality, or designation by the Secretary of Health and Human Services as a Health Professional Shortage Area, a Medically Underserved Area, or a Medically Underserved Population;

v) For purposes of this subsection (b) (5) only, all services within the 30-minute normal travel time meet or exceed the utilization standard specified in 77 Ill. Adm. Code 1100.

b) <u>Planning Area Need Review Criterion</u>

The applicant shall document that the number of stations to be established or added is necessary to serve the planning area's population, based on the following:

1) 77 Ill. Adm. Code 1100 (formula calculation)

According to the November 2012 update to the IDPH Inventory of Health Care Facilities ("Inventory"), HSA-VI shows a computed need for 82 ESRD stations. This project is requesting to establish a 16-station ESRD facility in 6,781 GSF of leased space in the Lawndale neighborhood of Chicago.

2) Service to Planning Area Residents

The primary purpose of this project is to provide in-center ESRD services to an existing and growing patient base in the Lawndale neighborhood of Chicago (HSA-VI). The applicants note the 25 existing dialysis patients expected to transfer from Little Village Dialysis reside in the service area, as well as 74 of the 148 pre-ESRD patients currently seen by Dr. Aneziokoro are expected to utilize the proposed facility upon project completion.

3) <u>Establishment of In-Center Hemodialysis Services</u>

The applicants provided zip codes for the 148 pre-ESRD patients under Dr. Aneziokoro's care, and the 25 current ESRD patients served at Little Village Dialysis, fulfilling the requirements of this criterion.

4) Service Accessibility

As mentioned earlier, the proposed 16-station dialysis facility is necessary to maintain sufficient access to dialysis services in the Lawndale neighborhood of Chicago. The proposed ESRD facility will alleviate an existing condition of overcrowding at the neighboring Little Village Dialysis facility, and provide added stations to a service area where 21

(46.7%) of the 45 existing ESRD facilities exceed the 80% operational capacity, and report an overall average occupational capacity of 75%.

Conclusion

Current need determinations illustrate a need for 82 additional stations. However, current utilization data (See Table Five) identifies underutilized facilities in a 30-minute radius. Based on these findings, a positive finding cannot be made.

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT <u>DOES</u> <u>NOT</u> APPEAR TO BE IN CONFORMANCE WITH THE PLANNING AREA NEED CRITERION (77 IAC 1110.1430(b)).

- c) <u>Unnecessary Duplication / Maldistribution Review Criterion</u>
 - 1) The applicant shall document that the project will not result in an unnecessary duplication. The applicant shall provide the following information:
 - A) A list of all zip code areas that is located, in total or in part, within 30 minutes normal travel time of the project's site;
 - B) The total population of the identified zip code areas (based upon the most recent population numbers available for the State of Illinois population); and
 - C) The names and locations of all existing or approved health care facilities located within 30 minutes normal travel time from the project site that provide the categories of station service that are proposed by the project.
 - The applicant shall document that the project will not result in maldistribution of services. Maldistribution exists when the identified area (within the planning area) has an excess supply of facilities, stations and services characterized by such factors as, but not limited to:
 - A) A ratio of stations to population that exceeds one and onehalf times the State average;
 - B) Historical utilization (for the latest 12-month period prior to submission of the application) for existing facilities and

- services that is below the utilization standard established pursuant to 77 Ill. Adm. Code 1100; or
- C) Insufficient population to provide the volume or caseload necessary to utilize the services proposed by the project at or above utilization standards.
- 3) The applicant shall document that, within 24 months after project completion, the proposed project:
 - A) Will not lower the utilization of other area providers below the occupancy standards specified in 77 Ill. Adm. Code 1100; and
 - B) Will not lower, to a further extent, the utilization of other area hospitals that are currently (during the latest 12-month period) operating below the occupancy standards.

The applicants supplied a listing of all 148 pre-ESRD patients with corresponding zip codes served by Dr. Aneziokoro in the Lawndale Dialysis service area. The applicants also identified 25 pre-ESRD patients served by the same physician, with zip codes, who are expected to transfer from DaVita's Little Village dialysis, and utilize the proposed facility upon project completion. Based on the current station need in HSA-VI (82 ESRD Station), this facility's establishment would reduce the station need and alleviate overcrowding in at least one neighboring ESRD facility. However, Board Staff identified 45 existing facilities within 30 minutes and found 25- (56%) of the facilities are operating below the target occupancy of 80%, and average utilization of the 45 facilities is 75%. Given the fact that 25 (56%) of the facilities in the service area are performing beneath the State standard (80%), it appears a duplication of service will result with the establishment of this facility.

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT <u>DOES</u> <u>NOT</u> APPEAR TO BE IN CONFORMANCE WITH THE UNNECESSARY DUPLICATION/MALDISTRIBUTION CRITERION (77 IAC 1110.1430 (c) (1) (2)).

C) Staffing - Availability

The Criterion states:

"The applicant shall document that relevant clinical and professional

staffing needs for the proposed project were considered and that licensure and JCAHO staffing requirements can be met. In addition, the applicant shall document that necessary staffing is available by providing letters of interest from prospective staff members, completed applications for employment, or a narrative explanation of how the proposed staffing will be achieved.

- 1) Qualifications
 - A) Medical Director Medical direction of the facility shall be vested in a physician who has completed a boardapproved training program in nephrology and has at least 12 months experience providing care to patients receiving dialysis.
 - B) Registered Nurse The nurse responsible for nursing services in the unit shall be a registered nurse (RN) who meets the practice requirements of the State of Illinois and has at least 12 months experience in providing nursing care to patients on maintenance dialysis.
 - C) Dialysis Technician This individual shall meet all applicable State of Illinois requirements (see 210 ILCS 62, the End Stage Renal Disease Facility Act). In addition, the applicant shall document its requirements for training and continuing education.
 - D) Dietitian This individual shall be a registered dietitian with the Commission on Dietetic Registration, meet the practice requirements of the State of Illinois (see the Dietetic and Nutrition Services Practice Act [225 ILCS 30]) and have a minimum of one year of professional work experience in clinical nutrition as a registered dietitian.
 - E) Social Worker The individual responsible for social services shall have a Master's of Social Work and meet the State of Illinois requirements (see 225 ILCS 20, the Clinical Social Work and Social Work Practice Act)."

The applicants are proposing to establish a 16-station ESRD facility in the Lawndale neighborhood of Chicago. The applicants note all staff hired for the proposed facility will be trained utilizing DaVita's comprehensive training program, meeting all State and Medicare requirements. It appears the applicants have provided the necessary information as required by this criterion.

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE STAFFING CRITERION (77 IAC 1110.1430 (e) (1)).

D) Support Services

The Criteria states:

"An applicant proposing to establish an in-center hemodialysis category of service must submit a certification from an authorized representative that attests to each of the following:

- 1) Participation in a dialysis data system;
- 2) Availability of support services consisting of clinical laboratory service, blood bank, nutrition, rehabilitation, psychiatric and social services; and
- 3) Provision of training for self-care dialysis, self-care instruction, home and home-assisted dialysis, and home training provided at the proposed facility or the existence of a signed, written agreement for provision of these services with another facility."

The applicants are proposing to establish a 16-station ESRD facility in the Lawndale neighborhood of Chicago. The applicants have provided the necessary documentation as required by this criterion.

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS IN CONFORMANCE WITH THE SUPPORT SERVICES CRITERION (77 IAC 1110.1430 (f)).

g) Minimum Number of Stations
The minimum number of in-center hemodialysis stations for an End
Stage Renal Disease (ESRD) facility is:

- 1) Four dialysis stations for facilities outside an MSA;
- 2) Eight dialysis stations for a facility within an MSA.

The proposed 16 station ESRD facility will be located in an MSA, meeting the requirements of this criterion.

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE MINIMUM NUMBER OF STATIONS CRITERION (77 IAC 1110.1430 (g)).

h) Continuity of Care
An applicant proposing to establish an in-center hemodialysis category
of service shall document that a signed, written affiliation agreement or

hospital services. Documentation shall consist of copies of all such agreements.

The applicants have provided the required affiliation agreement as required. The transfer agreements are with Saint Anthony Hospital, Chicago and Northwestern Memorial Hospital, Chicago. The applicants have met the requirements of this criterion.

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE CONTINUITY OF CARE CRITERION (77 IAC 1110.1430 (h)).

j) Assurances

The Criterion states:

"The applicant representative who signs the CON application shall submit a signed and dated statement attesting to the applicant's understanding that:

- 1) By the second year of operation after the project completion, the applicant will achieve and maintain the utilization standards specified in 77 Ill. Adm. Code 1100 for each category of service involved in the proposal; and
- 2) An applicant proposing to expand or relocate in-center hemodialysis stations will achieve and maintain compliance with the following adequacy of hemodialysis outcome measures for the latest 12-month period for which data are available: ≥ 85% of hemodialysis patient population achieves area reduction ratio (URR) ≥ 65% and ≥ 85% of hemodialysis patient population achieves Kt/V Daugirdas .1.2."

The applicants provided the required certification information on page 121 of the application for permit as required of the criterion. The applicants note DaVita patients in Illinois have achieved the following adequacy outcomes, and the same is expected for Lawndale Dialysis.

- 85% of patients had a URR > 65%
- 85% of patients had a Kt/V \geq 1.2

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE ASSURANCES CRITERION (77 IAC 1110.1430 (j)).

X. <u>1120.120 - Availability of Funds</u>

The applicant shall document that financial resources shall be available and be equal to or exceed the estimated total project cost plus any related project costs by providing evidence of sufficient financial resources.

The applicants are funding the project with cash and securities totaling \$487,715, a bank loan of \$1,283,758 and the FMV of the leases totaling \$1,374,469. A review of the applicants' financial statements indicates that sufficient cash is available to fund the project and repay the loan.

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE AVAILABILITY OF FUNDS CRITERION (77 IAC 1120.120 (a)).

XI. <u>1120.130 - Financial Feasibility</u>

A. Criterion 1120.130 - Financial Viability

Financial Viability Waiver
The applicant is NOT required to submit financial viability ratios if:

- 1) all project capital expenditures, including capital expended through a lease, are completely funded through internal resources (cash, securities or received pledges); or
 - HFSRB NOTE: Documentation of internal resources availability shall be available as of the date the application is deemed complete.
- 2) the applicant's current debt financing or projected debt financing is insured or anticipated to be insured by Municipal Bond Insurance Association Inc. (MBIA), or its equivalent; or
 - HFSRB NOTE: MBIA Inc is a holding company whose subsidiaries provide financial guarantee insurance for municipal bonds and structured financial projects. MBIA coverage is used to promote credit enhancement as MBIA would pay the debt (both principal and interest) in case of the bond issuer's default.
- 3) the applicant provides a third-party surety bond or performance bond letter of credit from an A rated guarantor (insurance

company, bank or investing firm) guaranteeing project completion within the approved financial and project criteria.

The applicants are funding the project with cash and securities totaling \$487,715, a bank loan of \$1,283,758 and the FMV of the leases totaling \$1,374,469. A review of the applicants' financial statements indicates that sufficient cash is available to fund the project and repay the loan. Table Seven documents DaVita's financial ratios and Table Eight Davita's credit ratings.

TABLE SEVEN Financial Ratio Davita, Inc.								
	Standard	2008	2010	2011	2015	Met Standard		
Current Ratio	1.5	2.2	2.8	2	8.2	Yes		
Net Margin %	3.50%	7.90%	7.50%	8.20%	15.10%	Yes		
% Debt to Total Capitalization	<80%	37%	39%	39%	38%	Yes		
Projected Debt Service Coverage	>1.75	3.24	4.96	3.05	10.26	Yes		
Days Cash on Hand	>45 days	40	60	26	64	No		
Cushion Ratio	>3.0	2	4.7	1.1	6.8	No		

TABLE EIGHT				
DaVita Credit Ratings				
	Standard &	Moody's	Fitch	
	Poor's			
Davita Corporate	BB-	Ba3	BB-1	
Credit Rating				

BB—Less vulnerable in the near-term but faces major ongoing uncertainties to adverse business, financial and economic conditions.

Ba1-Speculative investment. Occurs often in deteriorated circumstances, usually problematic to predict future development

BB - ratings indicate an elevated vulnerability to default risk, particularly in the event of adverse changes in business or economic conditions over time; however, business or financial flexibility exists which supports the servicing of financial commitments

Ba3 - Questionable credit quality

BB-1 - Prone to changes in the economy

A minus sign (-) signifies an intermediate rating in each category

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE FINANCIAL FEASIBILITY CRITERION (77 IAC 1120.130 (a)).

XII. Section 1120.140 - Economic Feasibility

A. Criterion 1120.140(a) - Reasonableness of Financing Arrangements

The applicant shall document the reasonableness of financing arrangements by submitting a notarized statement signed by an authorized representative that attests to one of the following:

- 1) That the total estimated project costs and related costs will be funded in total with cash and equivalents, including investment securities, unrestricted funds, received pledge receipts and funded depreciation; or
- 2) That the total estimated project costs and related costs will be funded in total or in part by borrowing because:
- A) A portion or all of the cash and equivalents must be retained in the balance sheet asset accounts in order to maintain a current ratio of at least 2.0 times for hospitals and 1.5 times for all other facilities; or
- B) Borrowing is less costly than the liquidation of existing investments, and the existing investments being retained may be converted to cash or used to retire debt within a 60-day period.

The applicants are funding the project with cash and securities totaling \$487,715, a bank loan of \$1,283,758 and the FMV of the leases totaling \$1,374,469. A review of the applicants' financial statements indicates that sufficient cash is available to fund the project and repay the loan..

THE STATE BOARD STAFF FINDS THE REASONABLENESS OF FINANCING ARRANGEMENTS CRITERION IS INAPPLICABLE TO THE PROPOSED PROJECT (77 IAC 1120.140(a)).

B. Criterion 1120.140(b) - Terms of Debt Financing

This criterion is applicable only to projects that involve debt financing. The applicant shall document that the conditions of debt financing are reasonable by submitting a notarized statement signed by an authorized representative that attests to the following, as applicable:

1) That the selected form of debt financing for the project will be at the lowest net cost available;

- 2) That the selected form of debt financing will not be at the lowest net cost available, but is more advantageous due to such terms as prepayment privileges, no required mortgage, access to additional indebtedness, term (years), financing costs and other factors;
- 3) That the project involves (in total or in part) the leasing of equipment or facilities and that the expenses incurred with leasing a facility or equipment are less costly than constructing a new facility or purchasing new equipment.

The applicants are funding the project with cash and securities totaling \$487,715, a bank loan of \$1,283,758 and the FMV of the leases totaling \$1,374,469. The applicants have provided an attestation that the project costs will be funded, in part, by borrowing because depleting the cash reserves of one of the joint venture partners will adversely affect its current ratio.

THE STATE BOARD STAFF FINDS THE TERMS OF DEBT FINANCING CRITERION IS INAPPLICABLE TO THE PROPOSED PROJECT (77 IAC 1120.140(b)).

C. Criterion 1120.140(c) - Reasonableness of Project Cost

The applicant shall document that the estimated project costs are reasonable and shall document compliance with the State Board's standards as detailed in 77 IAC 1120.

<u>Modernization Contracts and Contingencies</u> - These costs total \$1,080,600 or \$159.35 per gross square feet. (\$1,080,600/6,781 GSF = \$159.35/GSF) This appears **reasonable** when compared to the State Board standard of \$159.84/GSF.

<u>Contingencies</u> – These costs total \$140,000. These costs are 14.8% of modernization costs. This appears **reasonable** when compared to the State Board standard of 10%-15% of modernization costs.

<u>Architect and Engineering Fees</u> – These costs total \$52,800 or 4.8% of modernization and contingency costs. This appears reasonable when compared to the State Board standard of 6.9%-10.36 % of modernization and contingency costs.

<u>Moveable Equipment</u> - These costs total \$525,708 or \$32,856 per station. This appears reasonable when compared to the State Board standard of \$39,945.

<u>Interest Expense During Construction</u> – These costs total \$37,363. The State Board does not have a standard for these costs.

<u>Fair Market Value of Leased Space</u> - These costs are \$1,374,469. The State Board does not have a standard for these costs.

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE REASONABLENESS OF PROJECT COST CRITERION (77 IAC 1120.140 (c)).

D) Criterion 1120.140 (d) - Projected Operating Costs

The applicant shall provide the projected direct annual operating costs (in current dollars per equivalent patient day or unit of service) for the first full fiscal year at target utilization but no more than two years following project completion. Direct cost means the fully allocated costs of salaries, benefits and supplies for the service.

The applicants anticipate the direct operating costs per treatment to be \$226.03. The State Board does not have a standard for these costs.

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE PROJECT DIRECT OPERATING COSTS CRITERION (77 IAC 1120.140 (d)).

E) Criterion 1120.140 (e) - Total Effect of the Project on Capital Costs

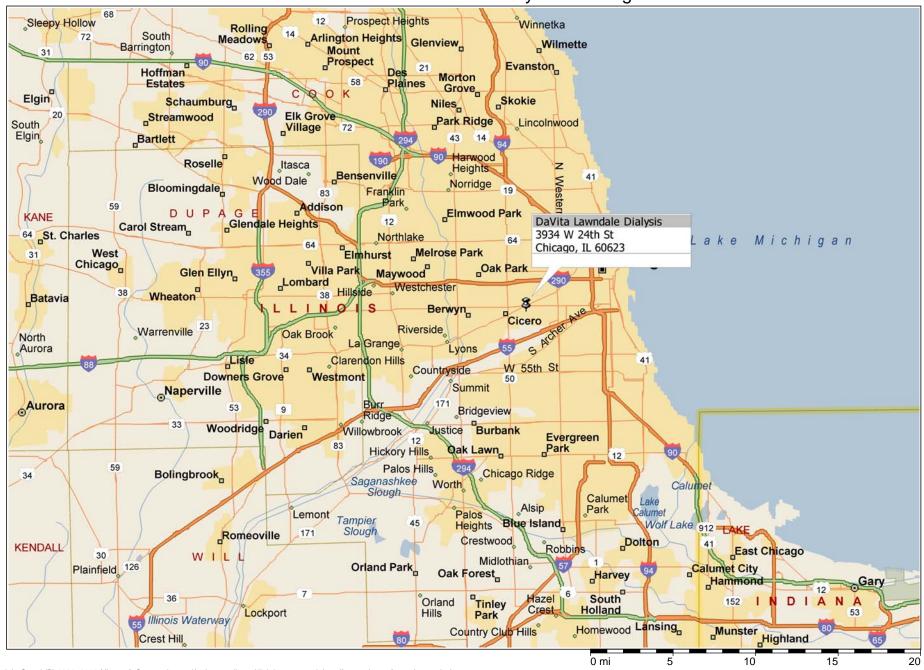
The applicant shall provide the total projected annual capital costs (in current dollars per equivalent patient day) for the first full fiscal year at target utilization but no more than two years following project completion.

The applicants anticipate the total effect of the Project on Capital Costs per treatment to be \$14.21. The State Board does not have a standard for these costs.

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE TOTAL EFFECT

OF THE PROJECT ON CAPITAL COSTS CRITERION (77 IAC 1120.140 (e)).

12-085 DaVita Lawndale Dialysis - Chicago



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